

between DB AG and Deutsche Bank Securities Inc. ("DBSI") that, plaintiffs argue, will plausibly allege DB AG learned of the Refco fraud from DBSI. See Krys Plaintiffs' Objection to the Report and Recommendation of the Special Master on Deutsche Bank Defendants' Motion to Dismiss ("Pl. Obj.") at 13-14. Specifically, plaintiffs' proposed amendment would allege that three agents of DB AG decided that DB AG would participate in the Refco LBO, over the objections of DBSI's credit risk committee. Id. From this, plaintiffs suggest, the complaint would plausibly allege that DB AG, like DBSI, knew that Refco was insolvent and was fraudulently hiding its true financial condition.

The Court disagrees. Unlike the highly specific allegations in plaintiffs' complaint against DBSI that suggest DBSI learned of the Refco fraud through its due diligence on Refco, see DB R&R at 44-45 (recounting plaintiffs' allegations of specific internal DBSI emails, memos, notes, etc.), the mere fact that three DB AG agents decided DB AG would participate in the Refco LBO over DBSI's credit risk committee's objection does not plausibly suggest DB AG had "actual knowledge" of the Refco fraud. See Rosner v. Bank of China, 349 F. App'x 637, 638 (2d Cir. 2009) (holding allegations of "reason to suspect" fraud not sufficient to show "actual knowledge" of fraud). Accordingly, plaintiffs' request for leave to amend is hereby denied.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
February 16, 2012